UNITED
NATIONS

CERD

International Convention
on the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/147/Add.2 **/
29 January 1988

ENGLISH
Original: FRENCH

INTERNATIONAL CONVENTION ON THE ELIMINATION
OF ALL FORMS OF RACIAL DISCRIMINATION

COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Seventh periodic reports of States Parties due in 1986

Addendum

# HAITI */

[15 September 1987]

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*/ For previous reports submitted by the Government of Haiti, and the summary records of meetings at which such reports were considered, see:

Initial report - CERD/C/R.63/Add.2 and Add.5 (CERD/C/SR.207, SR.215 and SR.250);
Second periodic report - CERD/C/R.87/Add.2 (CERD/C/SR.305);
Third periodic report - CERD/C/64/Add.5 (CERD/C/SR.554);
Fourth periodic report - CERD/C/64/Add.5 (CERD/C/SR.554);
Fifth periodic report - CERD/C/89/Add.2 (CERD/C/607-SR.608);
Sixth periodic report - CERD/C/116/Add.2 (CERD/C/SR.736-SR.737).

**/ Reissued for technical reasons.

GE.90-16113/1871B

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## PART I - GENERAL

1. The Government of the Republic of Haiti affirms, once again, that racial discrimination, as defined in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, does not exist in Haiti.

2. The Government of Haiti has consistently supported, both nationally and internationally, the struggle against racial discrimination in all its forms. The visit to Haiti in December 1984 by Mr. Théo Bengurirab, the Permanent Representative of the South-West Africa People's Organization (SWAPO) to the United Nations at the invitation of the Government of Haiti was a notable example of that support. Similarly, in a communiqué dated 6 August 1985, the Ministry of Foreign Affairs of Haiti protested strongly against the introduction of the state of emergency, on 20 July 1985, in 36 districts in South Africa and urged the Pretoria authorities to put an end to their criminal policy of apartheid.

3. In the same connection, the Government of Haiti, through its Permanent Representative to the United Nations, took the initiative, on 16 August 1985, of launching a fund-raising campaign on behalf of Mrs. Winnie Mandela, whose clinic and house had been burnt down by officials of the Pretoria régime.

4. In the domestic sphere, since the fall of the Duvalier dictorship on 7 February 1986, a large number of legislative, judicial, administrative and other measures have been enacted by the National Governing Council (CNG) to eliminate any after-effects of colonialism and racial discrimination and to safeguard and promote human rights in Haiti.

5. Of these measures, the decree of 30 July 1986 regulating the activities of political parties in a rational manner, that of 31 July 1986 revoking the decree of 31 March 1980 on the press and replacing it by legislation more consistent with the current democratic criteria and, finally, the new democratic Constitution of 10 March 1987 are of outstanding importance.

6. It should be noted that article 276-2 of the present Constitution states: "International treaties or agreements, after being approved and ratified in the manner prescribed by the Constitution, shall become part of national legislation and shall abrogate any laws which are incompatible with them".

7. This means that the provisions of the Convention may be invoked in Haitian courts and in administrative bodies. Moreover, the Convention, having been ratified by the Republic of Haiti on 19 December 1972, prevails over national law.

8. With regard to demographic data, in 1987 Haiti had a population of approximately 5,417,602 persons, 2,791,402 of them women and 2,626,200 men. The results of the last census conducted in 1982 did not make it possible to determine the ethnic composition of the population. However, the Committee will find certain statistical tables relating to the distribution in the population by religion and sex, based on school attendance in 1982, etc. */

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*/ These tables are in the archives of the secretariat and are available to any members of the Committee wishing to consult them.

## PART II - INFORMATION IN RELATION TO ARTICLES 2 TO 7

### Article 2

9. In conformity with the new Constitution of the Republic of Haiti, of 10 March 1987, the organs and institutions of the State are required to guarantee all fundamental rights to all citizens, without any distinction. In respect of these rights, the 1987 Constitution prescribes in article 19 that: "The State has the strict obligation to guarantee the right to life, to health and to respect for the human person to all citizens without distinction, in conformity with the Universal Declaration of Human Rights".

10. Certain repressive laws which helped to sow discord within Haitian society have either been abrogated or revised by the National Governing Council (CNG), with a view to a national reconciliation capable of promoting the economic and social development of Haiti, with liberty and equality for all, and without discrimination as to sex, colour, degree of fortune, social origin or race.

11. The Government of Haiti did not consider it incumbent upon it to take specific measures to punish acts of racial discrimination for the simple reason that such acts have never occurred in Haiti. Aliens may avail themselves of all rights, except when certain restrictions are applied depending on whether nationals or non-nationals of Haiti are involved. These restrictions can in no way be considered to be acts of racial discrimination in the light of the definition of this term contained in article 1 of the Interntional Convention on the Elimination of All Forms of Racial Discrimination.

12. Many other minority ethnic groups, such as Lebanese, Syrians and others have been living in Haiti for several centuries. Many of them have acquired Haitian nationality. As a result of the climate of non-discrimination towards all races prevailing in Haiti, some of them have become important merchants. The general policy of the Government of Haiti encourages peaceful co-existence among all races without any distinction.

### Article 3

13. As far as apartheid is concerned, the Government of Haiti has always strongly condemned South Africa for this odious policy and it continues to demand its abolition and the establishment in South Africa of a genuinely democratic society based on equal rights and on respect for the dignity of all South Africans, without discrimination as to sex, colour, nationality or degree of fortune.

14. The Government of Haiti remains confident that only the implementation of global and mandatory sanctions against the Pretoria régime, under Chapter VII of the Charter of the United Nations, can bring about the elimination of apartheid.

15. Similarly, the Republic of Haiti, which maintains no diplomatic, economic, cultural, sporting or other relations with South Africa, will continue to support all organizations in South Africa, and particularly the African National Congress, that are struggling to bring apartheid to an end.

READEX FICHE

Article 4

16. Although the practice of racial discrimination within the meaning of article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination is unacceptable in Haiti in order to bring Haitian legislation closer into line with the Convention, the Government considered it necessary to adopt the decree of 4 February 1981, to establish safeguards against any attempt at racial discrimination.

17. Article 1 of the decree makes any act of racial discrimination an offence. The article states:

> "Any act of racial discrimination or behaviour which violates fundamental human rights on the ground of race, colour or membership of a particular ethnic group shall be deemed an offence punishable ...".

18. Article 3 states that "Absence of racial discrimination shall be an absolute rule of public order".

19. These are provisions of public order, in other words, above individual conventions. No one, regardless of race, colour, sex, etc., may waive this absolute principle of non-discrimination for any reason, whatever the privilege that may be promised to him in return. If, in connection with an individual convention, which makes provision for the violation of the absolute rule of public order of non-discrimination, a dispute arises between the parties and the case is brought before a judge who is required to give a ruling, the latter is obliged, in his decision, to enforce the principle of non-discrimination established by the Constitution and the law of Haiti.

20. Article 6 prescribes penalties for any person, group of persons or institution committing, supporting or encouraging an act of racial discrimination.

21. The article reads as follows:

> "The following persons shall be tried and punished by imprisonment from six months to two years or by a fine of 5,000 to 25,000 gourdes:
>
> (1) Any person engaging in an act or practice of racial discrimination against persons, groups of persons or institutions;
>
> (2) Any person who encourages or supports racial discrimination practised by any individual or organization;
>
> (3) Any person engaging or participating in any propaganda or in any organization based on ideas or theories founded on the superiority of a particular race, or of a group of persons of a particular colour or ethnic origin."

22. The mandatory provisions of the Penal Code also condemn any individuals or groups in whom public authorities is vested who conspire to frustrate the application of the laws of the country.

23. For example, article 92 of the Haitian Penal Code specifies that:

> "Any conspiracy for measures contrary to the law, either in the form of meetings of individuals or groups vested with public authority either by deputation or by correspondence between them shall entail imprisonment for not less than one month and not more than three months for each offender, who may also be prohibited from exercising political rights and holding any public post for a period of not more than five years."

Article 5

24. The legislation of the Republic of Haiti contains effective guarantees concerning the equal rights of all citizens, independently of race, colour, national or ethnic origin, in respect of the exercise of the rights and freedoms set forth in article 5 of the Convention.

A. The right to equal treatment before the tribunals and all other organs administering justice

25. All citizens, without any distinction, may apply to the courts in order to enforce their rights, when they consider that they have been encroached upon by an individual, a group of individuals or an institution. Equal treatment is guaranteed to them under the legislation in force in Haiti.

26. Moreover, "the national watchwords of Haiti shall be Liberty, Equality and Fraternity" (article 4 of the 1987 Constitution).

27. Article 18 of the 1987 Constitution prescribes that "Haitians shall be equal before the law, subject to the advantages conferred on native-born Haitians who have never renounced their nationality".

28. This restriction applies only to certain political rights. Foreign-born naturalized Haitians are entitled to vote and, five years after becoming naturalized, they may be eligible to hold public offices other than those restricted by the Constitution and the law to native-born Haitians (article 12-2 of the 1987 Constitution).

29. Any sovereign State has the legitimate right not to allow a foreign-born person to rule the country. This generally accepted restriction is not directed against a particular nationality. Consequently, the Government of Haiti does not consider this restriction to be an act of discrimination. Article 1, paragraph 3, of the International Convention on the Elimination of All Forms of Racial Discrimination is also drafted along the same lines.

30. Similarly, it should be emphasized that an important concession has been made in article 286 of the current Constitution to Haitians who opted in favour of another nationality during the 29 years of the régime now overturned. Many Haitians were compelled to go into exile because of the repression employed by the former régime and had no alternative than to acquire a foreign nationality, in order to be able to provide for their families. The lawmaker has taken account of this mitigating circumstance to enable them to recover the rights and privileges conferred by Haitian nationality.

31. Article 286 prescribes that:

"Any Haitian who acquired a foreign nationality during the 29 years preceding 7 February 1986 may, by a declaration made to the Ministry of Justice within a period of two years with effect from the publication of the Constitution, recover his Haitian nationality with the advantages deriving therefrom, in conformity with the law."

B. The universal right to security of the human person and protection by the State, without discrimination

32. The current Constitution of the Republic of Haiti protects all persons without any discrimination against any infringement of their rights.

33. Article 19 of the section on Fundamental Rights of the Constitution stipulates that:

"The State has the strict obligation to guarantee the right to life, to health and to respect for the human person to all citizens without distinction, in conformity with the Universal Declaration of Human Rights."

34. Article 24 provides that:

"Individual liberty shall be guaranteed and protected by the State.

1. No one may be prosecuted, arrested or detained except in the cases determined by the law and in the manner which it prescribes.

2. Except in cases of flagrante delicto, arrest and detention shall take place only on an order in writing from a legally competent official.

3. In order that such an order may be executed, it is necessary:

(a) That it formally states in Creole and in French the reason or reasons for the arrest or detention and the legal provision that punishes the act charged;

(b) That legal notice be given and that a copy of the order be handed over to the accused at the time of its execution;

(c) That the accused be notified of his right to the assistance of a lawyer at all stages of the investigation until the final ruling;

(d) Except in cases of flagrante delicto, no arrest by means of an order and no search may be made between six o'clock in the evening and six o'clock in the morning;

(e) Responsibility is personal. No one may be arrested in place of another."

35. Article 26 states that:

> "No one may be kept under arrest more than 48 hours unless he has appeared before a judge who is assigned to rule on . .e legality of the arrest and the judge has confirmed the arrest by a decision with statement of reasons."

C. Political rights

36. The legislation of Haiti is anti-discriminatory in respect of political rights, and in particular the right to take part in elections. It subordinates the right to vote and eligibility to objective conditions only. Article 17 of the 1987 Constitution states:

> "Without distinction as to sex and civil status, Haitians who have attained 18 years of age may exercise their civil and political rights if they meet the other conditions prescribed by the Constitution and by law."

37. Article 91 which enumerates the requirements in order to be a deputy, states:

> "To be a member of the Chamber of Deputies, it is necessary:
>
> (1) To be a native-born Haitian and never to have renounced one's nationality;
>
> (2) To have attained 25 years of age;
>
> (3) To enjoy one's civil and political rights and never to have been sentenced to a severe and infamous penalty for an ordinary law offence;
>
> (4) To have resided at least two consecutive years preceding the date of the elections in the constituency for which he is a candidate;
>
> (5) To be the owner at least of real estate in the constituency or to engage in a profession or industry in it;
>
> (6) To be in possession of an attestation of satisfactory discharge of duties as appropriate, in the case of an official in charge of public funds."

38. Any Haitian citizen without any distinction, who complies with the above conditions may stand as a candidate for the Chamber of Deputies. Similar conditions are laid down for the other elective functions, needless to say modified according to their importance.

39. The 1987 Constitution, in accordance with the desire of the population, made provisions for parish council, municipal, legislative and presidential elections. The National Governing Council has scheduled the official transfer of power to the freely elected Government on 7 February 1988.

40. In order to guarantee genuine and fair elections, the Constitution has established the temporary Electoral Council with responsibility for organizing in complete independence all elections throughout the territory of the

Republic up to the proclamation of the outcome of the vote (article 191). It comprises 12 members selected from institutions which do not take part in the elections as candidates, such as the Catholic Church, the reformed sects, the Senate of the University, organizations for the defence of human rights, and so on (article 289 of the Constitution).

D. Other civil rights

I. The right to freedom of movement and residence within the border of the State

41. Every citizen living in the national territory, provided that he conforms to the laws of the country, has the right to freedom of movement and freedom to establish his residence in the place of his choice.

II. The right to leave any country, including his one's own, and to return to one's country

42. This right is recognized by the Constitution to any citizen who respects the rules established by the Act of 26 December 1978 on immigration and emigration. In addition, with a view to extending the freedom to leave and return to one's country whenever one wishes, entry and exit visas, which had previously been obligatory, have been abolished by the Haitian legislator.

43. Indeed, under article 41-1 of the 1987 Constitution "No Haitian requires a visa in order to leave the country or to return to it".

III. The right to nationality

44. The Constitution lays down the conditions for acquiring and forfeiting Haitian nationality.

45. It should be pointed out that apart from the protection granted to all aliens living in the national territory, without distinction as to sex, race or colour, major changes concerning the facilities granted to aliens wishing to acquire Haitian nationality have been made by the Constitution of 27 August 1983, as amended, and the Constitution of 1 March 1987.

46. Article 12-1 of the latter Constitution has reduced by five years the period of legal residence in Haiti required for an alien wishing to acquire Haitian nationality.

47. The article stipulates that:

> "Any alien may acquire Haitian nationality by naturalization after 5 years' continuous residence instead of the 10 years' continuous residence in the territory of the Republic specified by the 1964 Constitution, as amended, provided he conforms to the regulations established by law."

48. The period of five years may be reduced to two, by article 16 of the decree of 6 November 1984 on nationality, for any alien married to a Haitian woman if he has rendered important service or brought distinguished talents to Haiti, or has introduced an industry, trade, art or useful invention or created an industrial or agricultural establishment.

IV. The right to marriage and choice of spouse

49. This right is not subject to any kind of discrimination. It suffices for the intending spouses to fulfil the conditions laid down by the Civil Code for entering into marriage.

50. The State has an obligation to protect the family, the fundamental unit of society, and to encourage marriage.

51. Under article 260 of the present Constitution:

> "The State has an obligation to provide equal protection to all families whether or not they are constituted by the ties of matrimony. It shall provide aid and assistance to mothers, children and the elderly."

V. The right to own property

52. This right is recognized and guaranteed by Haitian legislation. However, the State may deem it appropriate to acquire an individual's property in the public interest. In such a case, fair and prior compensation is paid to the party concerned.

53. This is a reflected in articles 36 and 36-1 of the present Constitution, which reads as follows:

> Article 36: "Private property shall be recognized and guaranteed. The law shall determine the modalities for its acquisition, use and limits".
>
> Article 36-1: "Expropriation may be carried out on grounds of public utility, in return for payment or a deposit ordered by a court to a duly authorized person, of fair and prior compensation set by an expert.
>
> If the initial project is abandoned, the expropriation shall be annulled and as the real property may not give rise to any speculation, it has to be restored to its original owner, without any reimbursement for the small landowner. The expropriation measure shall be effective from the time of the implementation of the project."

54. The right to own real property is also accorded to aliens residing in Haiti for their residential needs and to foreign companies for the needs of their agricultural, commercial, industrial, religious, humanitarian or educational enterprises.

VI. The right to inherit

55. The right to inherit is guaranteed by the Haitian Civil Code. Following the death or the loss of civil rights of either or both spouses, the estate is transferred to their children, their descendants and collateral relatives, in the order laid down by the rules established by the Code.

VII. The right to freedom of conscience and religion

56. In Haiti, all religions and creeds are free. The legislation of Haiti enables everyone, without any distinction constraint, to profess the religion of his choice, provided that he does not disturb the public order and peace.

57. The wording of article 30 of the 1987 Constitution is unequivocal on the subject:

> "All religions and all creeds shall be free. Every one shall have the right to profess his religion and practice his creeds, provided that the exercise of this right does not disturb public order and peace."
>
> Article 30-1: "No one may be obliged to belong to a religious body or to follow a religious teaching contrary to his convictions".

VIII. The right to freedom of opinion and expression

58. The members of the National Governing Council attach very great importance to the freedom of opinion and expression. Since their accession to power, they have done their utmost to create in Haiti a climate of peace and freedom conducive to the full realization of the freedom of the press.

59. The Constitution of Haiti has strengthened the movement by recognizing the right of every Haitian to express his opinions freely.

60. Article 28 of the Constitution provides that:

> "Every Haitian shall have the right to express his opinions freely on any subject through the medium of his choice".

61. Article 28-1, for its part, states that:

> "Journalists shall practice their profession freely within the framework of the law. Such exercise may not be subjected to any authorization or censure, except in the event of war."

IX. The right to freedom of peaceful assembly and association

62. In Haiti, this right admits to no exception.

63. Article 31 of the present Constitution guarantees this right in the following terms:

> "The freedom of unarmed association and assembly for political, economic, social, cultural or any other peaceful purposes shall be guaranteed".

64. Availing themselves of the climate of peace secured by the provisional Government, professional and other associations of teachers, chauffeurs, agronomists, clerks, workers, peasants, voodoo practitioners, etc., have formed associations in order to defend their interests.

E. Economic, social and cultural rights

65. Economic, social and cultural rights are recognized by the Constitution of Haiti.

I. The right to work

66. Articles 35-1 and 35-2 of the Constitution guarantee the right to work, to the free choice of employment, to just remuneration and to equal working conditions for all without any distinction.

II. The right to form and join trade unions

67. Trade union freedom is guaranteed under article 35-3 of the Constitution. Private sector, as well as public sector employees may join a trade union concerned with their professional activities for the exclusive protection of their employment interests.

68. Their right to strike within the limits determined by law is also recognized under article 35-5.

69. Since 7 February 1986, strikes and peaceful demonstrations under the protection of the forces of law and order have taken place in order to draw the attention of the persons responsible to the problems encountered by certain sectors of the country.

III. The right to housing

70. Considerable efforts have been made by the Haitian Government to improve the accommodation of the country's inhabitants. A large-scale programme involving the construction of public housing estates in the major towns of the country such as Port au Prince, Cap Haitien, and Cayes has been carried out or is in process of implementation. In 1987 which was proclaimed "International Year of Shelter for the Homeless", an organization called Entreprise Publique de Promotion des Logements Sociaux (EPPLS), sponsored by the Ministry of Social Affairs, was established with a view to studying jointly with the populations concerned the possibility of providing them with adequate housing.

IV. The right to public health, medical care, social security and social services

71. Despite the limited resources available to the Haitian Government, substantial efforts have been made to achieve the objective of health for all by the year 2000. Accordingly, health centres have been constructed in the remotest parts of the country to enable the disadvantaged to receive appropriate medical care.

72. With regard to social security, the Employment, Sickness and Maternity Accident Insurance (OFATMA) and the National Old Age Insurance Office (ONA) protect the workers.

V and VI. The right to education and training and the right to participation in cultural activities

73. The education budget, which is one of the major priorities of the Haitian Government, has been increased by more than 60 per cent. This increase has been reflected in teachers' salaries.

74. The Constitution guarantees the right to education in articles 32 to 34.1.

75. Article 32 states the following:

> "The State shall guarantee the right to education. It shall supervise the physical, intellectual, moral, vocational, social and civic training of the population."

76. Access to primary, secondary and university education is open in complete equality to all without any distinction.

F. The right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks

77. No restriction is placed on the right of access to any place or service intended for use by the general public such as transport, hotels, restaurants, cafes, theatres and parks.

Article 6

78. As stated at the beginning of this report, racial or any other discrimination as defined by article 1 of the Convention does not exist in Haiti. However, whenever a person considers that he has incurred moral, physical or other injury because of his racial origin, he can bring a complaint before the courts for redress invoking articles 1168, 1169, et seq. of the Haitian Civil Code. In the event of a crime, offence or infraction for the same reason, he can apply to the local justice of the peace, government prosecutor or examining magistrate to obtain justice.

79. The main trials held since 7 February 1986 of citizens accused of the unlawful arrest, torture, etc. of individuals, include those of Samuel Jérémie, Luc Désir and Edouard C. Paul, all of whom have been sentenced to hard labour.

Questions put by the members of the Committee

80. The Haitian Government apologizes for the delay in submitting its seventh report, due to the events of 7 February 1986, which led to the fall of the Duvalier dictatorship.

81. The Government is gratified at the favourable reception given to its sixth report by the Committee on the Elimination of Racial Discrimination at its fortieth session, and appreciates its constructive criticism.

82. It should be pointed out that the country's new democratic and liberal Constitution which was prepared by the Constituent Assembly and approved by a massive vote of the Haitian people on 29 March 1987, abrogated some repressive laws previously in force as well as some articles of the former Constitution which had been criticized by the members of the Committee.

83. The decree of 30 July 1986, regulating the activities of political parties in a rational manner, enables every Haitian citizen without any discrimination to form political parties in complete freedom. To exercise the right to vote, one must be Haitian, have attained 18 years of age, and enjoy one's civil and political rights. Illiterate persons also have this right. Each candidate's bulletin is of a different colour, and this enables his supporters, illiterate or not, to recognize it.

84. At present, 14 political parties have been registered, in accordance with the above-mentioned decree, at the Ministry of Justice, and 6 of them have obtained legal recognition.

85. The new Constitution, which establishes a parliamentary régime in Haiti with a Prime Minister, has cut down the powers of the President. Provision is made for an independent relationship among the executive, legislative and judicial branches (article 60 of the Constitution).

86. The people may also express their opinion by means of a referendum on all issues of national interest. Thus on 29 March 1987, the people approved, by an overwhelming majority, the country's new Constitution prepared by the Constituent Assembly which it had elected.

87. With regard to the questions put concerning the freedom of the press, the reply may be found in the information relating to article 5 of the Convention. The decree on the press of 31 July 1986 rescinded that of 31 March 1980 and replaced it by legislation more consistent with current democratic criteria. Haiti currently has an independent press consisting of daily and weekly newspapers, radio, television, etc. which openly criticizes the National Governing Council without being harassed.

88. As to trade union freedom, the new Constitution recognizes the right of Haitians to form trade unions freely. At present there are three major independent trade union federations in the country, which are affiliated to foreign trade union confederations. Workers may protect their interests through trade union action and may even have recourse to strikes by law under articles 200 to 210 of the country's Labour Code. Since 7 February 1986 many strikes have paralysed the proper functioning of the country. Whenever the workers' claims have been well founded, they have won their case thanks to the mediation of the Government.

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